

ORDINANCE NO. 2018-\_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 6.106 OF THE ALAMEDA COUNTY  
GENERAL ORDINANCE CODE TO REGULATE THE CULTIVATION OF CANNABIS  
IN THE UNINCORPORATED AREA OF THE COUNTY OF ALAMEDA

SECTION 1

The Board of Supervisors makes the following findings of fact in support of this ordinance:

1. In 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code section 11362.5 and titled the "Compassionate Use Act of 1996"); and
2. The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances; and
3. In 2004, Senate Bill 420 was enacted (codified as California Health and Safety Code section 11362.7 *et seq.* and titled the "Medical Marijuana Program Act") to clarify the scope of the Compassionate Use Act of 1996; and
4. In 2011, Assembly Bill 2650 was enacted (codified as California Health and Safety Code section 11362.768), which affirmed that counties could adopt ordinances that restrict the location and establishment of medical cannabis collectives and cooperatives; and
5. In 2015, Assembly Bill 243, Assembly Bill 266, Senate Bill 643 were enacted and were subsequently revised by Assembly Bill 21 in 2016 (codified, in part, as California Business and Professions Code sections 19300, *et seq.* and titled the "Medical Marijuana Regulation and Safety Act"). These bills also amended provisions of the Medical Marijuana Program Act related to the cultivation of medical cannabis; and
6. In 2016, Senate Bill 837 was enacted to change all references to medical marijuana or marijuana to medical cannabis or cannabis, including changing the name of the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act (MCRSA); and
7. MCRSA established a comprehensive framework to license and regulate commercial medical cannabis cultivation, manufacturing, distribution, transportation, sales, and testing; and
8. On November 8, 2016, the voters of the State of California approved Proposition 64 (codified, in part, as California Business and Professions Code sections 26000 *et seq.* and titled the "Control, Regulate and Tax Adult Use of Marijuana Act"), which decriminalized the adult use of cannabis for non-medical purposes and established a regulatory scheme at the state level; and

9. On June 27, 2017, Senate Bill 94 (codified, in part, as California Business and Professions Code sections 26000, *et seq.* and titled the “Medicinal and Adult-Use Cannabis Regulation and Safety Act”, or, “MAUCRSA”) repealed and replaced MCRSA. MAUCRSA consolidates the medical and non-medical cannabis statutes (MCRSA and Proposition 64).
10. Pursuant to California Business and Professions Code section 26200, nothing in MAUCRSA shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements; and
11. This Ordinance is enacted, consistent with the Compassionate Use Act of 1996, the Medical Marijuana Program Act, and MAUCRSA, to protect the public health, safety, and welfare of residents of the County of Alameda in relation to the cultivation of cannabis; and
12. The cultivation of cannabis in appropriate locations will help ensure that locally-produced cannabis cultivated pursuant to local and state regulatory schemes will be available to other cannabis businesses within the supply chain while preserving the character, health and safety of the surrounding area; and
13. Absent appropriate regulation, the cultivation of cannabis in the unincorporated area of the County poses a potential threat to public peace, health, and safety; and
14. The County has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, in preserving the safety, peace and quiet of the neighborhoods and agricultural districts within the unincorporated areas of the County by regulating the cultivation of cannabis; and
15. Pursuant to MAUCRSA, the California Department of Food and Agriculture has promulgated regulations governing commercial cannabis cultivation and is responsible for issuing state cultivation licenses; and
16. The existing retail operators in the County have demonstrated an ability to operate secure and responsible cannabis retail operations and to comply with existing county and state laws concerning the sale and dispensing of cannabis; and
17. In September 2017, the County adopted a pilot program allowing and regulating up to six medical cannabis cultivation sites; and
18. Increasing the allowable number of cultivation sites to ten, removing the pilot nature of the ordinance and expanding the allowable uses to cultivation of both medicinal and adult-use cannabis will allow the County to more fully implement recent state law and regulation concerning commercial cannabis businesses; and

19. A limited number of medicinal cannabis cultivation sites were selected and approved pursuant to the September 2017 version of the cannabis cultivation ordinance; and
20. Allowing approved medical cannabis cultivation sites to cultivate adult-use cannabis will streamline the County's regulation of cannabis sites; and
21. Allowing a single cultivation site to produce cannabis that may eventually be sold to both medicinal and adult-use retail customers will have limited if any impact on other County residents and businesses because the cultivation operation will not be materially impacted by the designation of the eventual retail customer as either medicinal or adult-use; and
22. All commercial cultivation operations will be required to obtain requisite state licenses in order to conduct business, including obtaining an adult-use (A-type) cultivation license and/or a medicinal (M-type) cultivation license as needed for the type of cultivation operation; and
23. All commercial cultivation operations will be required to comply with state law and state regulations, including but not limited to the requirement to record the movement of cannabis cultivated on-site through the supply chain via the state's track and trace system; and
24. The Board of Supervisors acknowledges that regulation of cannabis activities is an evolving field at the state level, as evidenced by the recent passage of Proposition 64, adoption of MAUCRSA, and release of emergency regulations by various state licensing agencies. As a result, the field of local regulation is also expected to continue to evolve over the next several years including possible further revisions to the County ordinances, policies and performance standards; and
25. Nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. sections 801, *et seq.* or to license any activity that is prohibited under said Act except as mandated by state law; and
26. Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) exempt cultivation operations from compliance with zoning and land use regulations, or, (3) allow any activity relating to the manufacturing, distribution, or consumption of cannabis that is illegal under state or federal law.

## SECTION 2

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of the County of Alameda, as follows:

Chapter 6.106 of the Alameda County General Ordinance Code is hereby repealed in its entirety.

Chapter 6.106 is hereby added to the Alameda County General Ordinance Code and reads as follows:

## **Chapter 6.106 – Cannabis Cultivation**

### **6.106.010 Purpose.**

The purpose and intent of this chapter is to provide a means for permitting and regulating the operation of a limited number of cannabis cultivation sites in a manner that is consistent with state law and which promotes the health, safety and general welfare of the residents and businesses within the unincorporated areas of the County of Alameda.

### **6.106.020 Definitions.**

The following words and phrases shall have the following meanings when used in this chapter:

- A. “Applicant” means a person who seeks a permit under this chapter by filing an application as provided for in this chapter.
- B. “Application” means that form provided by the Director and submitted in accordance with this chapter for the purpose of seeking a permit.
- C. “Cannabis” shall have the same definition as in Business and Professions Code section 26001(f), which defines “cannabis” as all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For purposes of this chapter, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety Code.
- D. “Cannabis cultivation” or, as used in this chapter, “Cultivation” or “Cultivate”, means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming, including any associated storage, of cannabis, including cannabis for medicinal use and/or adult-use in accordance with the Medicinal and Adult-Use Cannabis Regulation and Safety Act. Cannabis cultivation includes the operations of a cannabis nursery. Cannabis cultivation does not mean the temporary maintenance and selling of clones from a permitted retail operation, where such activities are incidental and subordinate to the primary retail operation.
- E. “Cannabis cultivation site” means a premises where one or more commercial cannabis cultivation activities takes place.

- F. "Cannabis nursery" means an operation that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.
- G. "Cannabis operator" or "operator" as used in this chapter means the natural person or designated officer responsible for the operation of any permitted cannabis operation.
- H. "Cannabis product" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients.
- I. "Clone" means the cutting of a cannabis plant that has been re-planted and is non-flowering.
- J. "Community Development Agency" means the community development agency of the County of Alameda.
- K. "County" means the County of Alameda.
- L. "Director" means the director of the Community Development Agency or his or her designee.
- M. "Indoor cannabis cultivation" means the cultivation of cannabis within a permanent enclosed structure using exclusively artificial light or within any type of structure using artificial light at a rate above 25 watts per square foot or such other threshold for indoor cultivation as may be established by the California Department of Food and Agriculture.
- N. "Lot" means a separate parcel of land shown and identified as such on the records of the county recorder or on the final map of an approved and recorded subdivision, excluding therefrom for the purposes of this title any portion thereof which lies within a street, within a lane, or within a fenced-off flood control easement.
- O. "Manufacture" means the process by which the raw agricultural cannabis is transformed into a concentrate, an edible product, topical product or similar cannabis product. Manufacturing includes producing, preparing, propagating, or compounding manufactured cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- P. "Mixed-light cannabis cultivation" means the cultivation of cannabis in a greenhouse, hoop-house, glasshouse, conservatory, hothouse, or other similar structure using light deprivation and/or artificial lighting below or equal to 25 watts per square foot or such other maximum threshold for mixed-light cultivation as may be established by the California Department of Food and Agriculture.

- Q. "Permit" means a cannabis cultivation permit issued by the county to operate a cannabis cultivation site under this chapter.
- R. "Permitted cannabis retail operation" or "cannabis retail operator" means a facility in possession of a permit issued pursuant to Chapter 6.108 where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, under the authority of the California Medicinal and Adult-Use Cannabis Regulation and Safety Act and as regulated by chapter 6.108.
- S. "Permittee" means a person who holds an effective and current permit under this chapter.
- T. "Person" means any human being or an incorporated or unincorporated business entity or association established under the laws of the state.
- U. "Premises" means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or permittee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area.
- V. "Sheriff" means the sheriff of the County of Alameda and his or her authorized representatives.
- W. "State" means the State of California.

**6.106.030 General requirements and terms.**

- A. It is unlawful for any person to conduct, engage in or allow to be conducted or engaged in, cannabis cultivation in the unincorporated portion of the County of Alameda, unless such cannabis cultivation operation has been granted a legally effective permit issued under this chapter. Notwithstanding the above, the permits issued under this chapter do not provide any protection or immunity for any person from state or federal laws, or from prosecution pursuant to any applicable state or federal laws. The owner, managing partner, corporate officer and/or any other person with primary responsibility for a medical cannabis operation shall maintain such operation in conformity with the terms of this chapter and with the terms of all permits issued pursuant to this chapter.
- B. The county shall have in effect no more than ten cannabis cultivation permits. Two of the ten permits may be issued in accordance with sections 6.106.050 through 6.106.060. The remaining available permits must be selected pursuant to sections 6.106.070 through 6.106.110 herein. The permits shall be issued for indoor cannabis cultivation or mixed-light cultivation only.
- C. Each cannabis cultivation permit shall expire two years after the date of its issuance or upon the expiration date established by the director, whichever is earlier.

- D. The fact that an applicant possesses other types of state or local permits or licenses shall not exempt the applicant from obtaining a cannabis cultivation permit under this chapter.
- E. A permittee may cultivate cannabis during the term of the permit only. A permittee shall have no right to cultivate cannabis before or after the expiration of the permit.
- F. Each cannabis cultivation site shall comply with all requirements in the Alameda County General Plan, including Measure D (Save Agriculture and Open Space Lands), any applicable specific plans, and Title 17 of the Alameda County General Ordinance Code.
- G. More than one premises may be located on a single lot. A separate permit must be issued for each premises on a single lot. Each premises shall only be occupied by one permittee unless otherwise authorized by applicable state laws regulations and county permit(s).
- H. The director may adopt such forms and procedures as are necessary to implement this chapter.

#### **6.106.040 Land use approval.**

Prior to commencement of cannabis cultivation activities, a permittee must obtain a conditional use permit pursuant to Sections 17.06,040 and 17.52.585 of the Alameda County Zoning Ordinance for operation of a cannabis cultivation site.

#### **6.106.050 Cannabis cultivation permit application procedures – vertically integrated operations.**

- A. Each application for a cultivation permit by a permitted cannabis retail operation in the unincorporated area of the county shall set forth or incorporate by reference the following information:
  - 1. The full name, date of birth, social security number, present address and telephone number of the applicant.
  - 2. Name and location of applicant's permitted cannabis retail operation.
  - 3. Address of the proposed cannabis cultivation operation and the name and address of the owner(s) of the lot(s) containing the premises.
  - 4. The address to which notice of action on the application is to be mailed.
  - 5. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the state of California and that it shall maintain compliance during the term of the permit.
  - 6. A statement that the applicant accepts and will comply with the standard conditions set forth in this chapter.
  - 7. The names of each person with an ownership interest of more than 10 percent in the proposed cultivation operation.

8. Certification, under penalty of perjury, that all the information contained in the application is true and correct.
  9. Authorization for the county, its agents and employees to seek verification of the information contained in the application.
  10. The applicant's agreement to hold harmless and indemnify the county from all costs and expenses, including attorney's fees, that the county incurs or that is held to be the liability of the county in connection with the county's defense of its actions in any proceeding challenging the county's actions with respect to the permit or cultivation project.
- B. The filing of an application shall be deemed complete upon the submission of an application in conformance with this section and payment of the application fees required by Section 6.106.140 and any fee schedule adopted by the County.
  - C. The director may establish a submission deadline for applications pursuant to this section.
  - D. It is unlawful to make any false statement or representation or to use or submit any false or fraudulent document(s) in any application made pursuant to this chapter.

**6.106.060 Application review and action – vertically integrated operations.**

- A. The director shall commence review of any application upon its filing. Within thirty business days after the filing of an application, the director shall reject any application and so notify the applicant if the application has been improperly completed or if it is incomplete. The applicant may amend and refile the application within thirty days after such rejection.
- B. Upon receipt of a complete application, the director shall approve the application and issue the applicant a notice of intent to grant the permit, if each of the following conditions are met:
  1. The applicant operates a permitted cannabis retail operation;
  2. The applicant's permitted cannabis retail operation has a record of good standing with the county for at least one year. For the purposes of this section, "good standing" means that the cannabis retail operation has commenced commercial operations and the cannabis retail operation permit has not been suspended or revoked and that there are no pending proceedings for the suspension or revocation of the cannabis retail operation permit.
  3. No person who is listed on the application pursuant to subsection (1) or (7) of Section 6.106.050(A) has been convicted of a felony within the past three years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.



4. The applicant or the operator listed in the application is at least twenty-one (21) years of age.
- C. Upon receipt of a complete application, the director shall deny the application if one or more of the conditions set forth in subsection (B) above are not met.
- D. The notice of intent to grant permit issued pursuant to subsection (B) shall include notice of the operating conditions that would attach to the permit. Within ten days after notice, the applicant shall either:
  1. Certify acceptance of the operating conditions and the standard conditions of the permit and pay all required fees, and the permit shall thereupon issue immediately.
  2. If the applicant refuses or fails to certify agreement with any operating condition or standard condition or to pay all required fees, the application shall be denied. The applicant may appeal any condition within ten days after notice of the conditions. Upon either the failure to file a timely appeal or the rejection of the appeal, the application shall be deemed denied.
- E. The operating conditions established by the director shall include the requirement for the permittee to obtain (1) any required state permits or licenses for the operation of a cultivation operation, and (2) all land use entitlements required to operate a cultivation operation. No cultivation permit shall be effective unless and until these conditions of approval are satisfied.

**6.106.070 Cannabis cultivation permit application procedures – cultivation only.**

- A. The director will initiate a process to solicit applications for the establishment of one or more cannabis cultivation sites that need not be affiliated with a permitted cannabis retail operation.
- B. Each application for the establishment of a cannabis cultivation site pursuant to this section shall be filed with the director and the director shall be responsible for administering the application solicitation and renewal application processes as set forth in this chapter.
- C. Wherever this chapter requires the county to give notice to an applicant, appellant or permittee, such notice shall be given by the director, in writing, and shall be delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested.
- D. No person or facility that purports to have cultivated cannabis prior to the enactment of this chapter and issuance of a permit hereunder shall be deemed to have been a legally established cultivation operation under the provisions of this chapter, and such person or facility shall not be entitled to claim a legal nonconforming status.

#### **6.106.080 Contents of cannabis cultivation permit application – cultivation only.**

A. In response to a solicitation for applications initiated by the director, each application for a cultivation permit pursuant to section 6.106.070 shall set forth or incorporate by reference the following information in a standard form adopted by the director:

1. Address of the proposed cannabis cultivation site and the name and address of the owner(s) of the lot(s) containing the premises.
2. The full name, date of birth, social security number, present address and telephone number of the applicant.
3. The address to which notice of action on the application is to be mailed.
4. All residential addresses of the applicant for the five years immediately prior to the date of the application.
5. Written proof that the applicant is twenty-one (21) years of age or older (i.e., California driver's license, California identification card or birth certificate).
6. The height and weight and the color of eyes and hair of the applicant.
7. Photographs of the applicant for identification purposes to be taken by the Sheriff.
8. The names and addresses of all businesses operated by and the employment history of the applicant for the five years immediately prior to the date of the application.
9. The address of all cannabis cultivation sites or retail operations that currently are or previously had been operated by the applicant and a statement of whether the authorization for any such operation had been revoked or suspended and, if so, the reason therefor.
10. The names and telephone numbers of the person or persons to be regularly engaged in the operation of the proposed cannabis cultivation site, whether an employee, volunteer or contractor. The application shall also identify those persons, including telephone numbers (i.e., emergency contact), having management and supervisory responsibilities for the proposed cannabis cultivation site. Every person listed as owner, manager, supervisor or employee must submit fingerprints and other necessary information for a background check to the Alameda County Sheriff's Office, and be photographed for identification purposes. In addition, any new employees, independent contractors, other persons and/or volunteers who will be regularly engaged at the proposed cannabis cultivation site must submit their information to the Sheriff's office within five days prior to their employment.
11. A security plan containing a detailed description of the proposed security arrangements for ensuring the safety of persons from theft and robbery and protection of the premises from theft and burglary. The security plan shall be submitted for review and approval by the Sheriff, and shall include a lighting plan showing existing and proposed exterior and interior lighting levels, alarms and security surveillance cameras. Security video shall be maintained for 30 business days and shall be made available to the Sheriff upon request. The video system for security cameras must be located in a locked, tamper-proof compartment. A professionally monitored robbery alarm system shall be installed and maintained in

good working condition. The security plan shall include the provision of a suitable locked safe on the premises for after-hours storage of cannabis.

12. A site plan, consisting of a sketch or diagram showing the entire lot(s) containing the premises. The site plan shall show the entire premises, including all buildings, accessory structures, storage, and parking areas. The site plan shall show the interior configuration of the greenhouse or other structure housing cultivation activities. The site plan shall include a statement of the floor area occupied by each structure at the premises. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the greenhouse or other structure housing cultivation activities to an accuracy of plus or minus twelve (12) inches.

13. A description of the external appearance of the cannabis cultivation site, including a precise depiction of any signage and access roads. All signage shall comply with the County General Plan, Zoning Ordinance and any applicable specific plan.

14. A description of products to be cultivated on the premises.

15. If the application proposes cultivation of cannabis for medicinal purposes, the mission statement of the cannabis cultivation site with respect to meeting the medicinal needs of patients.

16. A description of the methods by which the applicant will mitigate any potentially adverse impacts, such as traffic, light, odors or noise, on surrounding property owners. The cannabis cultivation site shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated on the premises is not detected outside the lot(s) on which it operates.

17. Authorization for the county, its agents and employees to seek verification of the information contained in the application.

18. Written certification that the applicant has reviewed and understands and accepts any performance standards for cannabis cultivation that may be adopted by the director. Written certification that the applicant will comply with all county ordinances, including building, zoning and health codes, allow inspections to ensure conformance with such regulations, cooperate with County agencies' efforts to monitor the retail operator's compliance with this applicable ordinances and with all conditions of permits issued pursuant to this Code, and pay any County fees assessed for monitoring permittee's compliance.

19. Certification, under penalty of perjury, that all the information contained in the application is true and correct.

20. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the state of California and that it shall maintain compliance during the term of the permit.

21. An operating plan specifically describing how the cannabis cultivation site will operate consistent with state and local law, including but not limited to: the minimum staffing levels for operation of the cannabis cultivation site, policies and procedures for record keeping, specific details of the cultivation operation's track and trace program, specific details regarding product testing, and other relevant information regarding the operation of the proposed cannabis cultivation site and including a copy of the cultivation operation's labor peace agreement when required by California

Business & Professions Code Section 26051.5 to enter into or abide by a labor peace agreement.

B. The filing of an application shall be deemed complete upon the submission of an application in conformance with this section and payment of the application fees required by Section 6.106.140.

C. It is unlawful to make any false statement or representation or to use or submit any false or fraudulent document(s) in any application made pursuant to this chapter.

**6.106.090 Initial review of application – cultivation only.**

A. The director shall commence review of any application received pursuant to section 6.106.080 immediately upon its filing and shall complete such initial review within the time period established in the solicitation process for cannabis cultivation permits, but in no event shall the initial review exceed sixty (60) days. In conducting this review, the following county agencies shall comment on specific portions of the application:

1. The Sheriff shall be responsible for verifying factual information in the application, including names, addresses and other information on the applicant, operator and employees of the proposed cultivation operation.
2. The Sheriff shall comment upon the adequacy of security measures that are described in the application, the security plan, the site plan, and other relevant aspects of the application.
3. The community development agency shall comment upon the proposed location's compliance with zoning regulations and conditions that are needed to mitigate adverse impacts on surrounding uses.
4. If the operation will produce cannabis for consumption by medicinal consumers, the health care services agency shall comment upon the services to be provided and the mission statement set forth in the application.

B. Within twenty (20) business days after the filing of an application, the director shall reject any application and so notify the applicant, if the application has been improperly completed or if it is incomplete. The applicant may amend and refile the application within ten days after such rejection.

C. At the conclusion of the initial review, the director shall notify the applicant of the results of the initial review of the application.

**6.106.100 Action upon completion of initial review – cultivation only.**

A. Upon completion of the initial review, the director shall reject any permit application that meets any of the following criteria:

1. The proposed cultivation operation does not comply with requirements of this chapter.
2. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application.
3. The proposed cultivation operation at the proposed location is prohibited by any state or local law or regulation.

4. Any person who is listed on the application pursuant to subsection (A)(10) of Section 6.106.080 has been convicted of a felony within the past three (3) years. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
5. The applicant or the operator listed in the application is less than twenty-one (21) years of age.
6. The health care services agency has determined, for an operation that will produce cannabis for consumption by medicinal consumers, that the application for a cannabis cultivation site has failed to state a health care purpose that fulfills the purposes of Sections 11362.5, *et seq.* of the California Health and Safety Code
7. The applicant is delinquent in the payment of any applicable state or County taxes and fees.

B. Any application that is not rejected upon completion of the initial review shall be deemed an eligible application and submitted to the final selection phase of the solicitation process.

**6.106.110 Final selection of cannabis cultivation sites – cultivation only.**

A. The final selection phase of the solicitation process shall include selection from the eligible applications and the establishment of operating conditions for any permits issued under this chapter to the selected eligible applicants. The final selection process shall not exceed sixty (60) days in the absence of an appeal.

B. If the number of eligible applications is the same as or less than the allowable number of cannabis cultivation sites allowed pursuant to section 6.106.030, then all responsible applications shall be submitted for establishment of operating conditions as set forth in subsection C of this section. If the number of eligible applications exceeds the maximum number of cannabis cultivation sites pursuant to 6.106.030, then a competitive evaluation process shall be conducted in which applicants are scored and ranked with the director recommending issuance of a permit to the highest ranked, eligible and responsible applicants. The director may establish a minimum required score or other mechanism to disqualify or reject applications determined to be irresponsible.

C. The director may establish operating conditions for cannabis cultivation sites for each eligible, responsible application that has been submitted for final selection. The operating conditions shall be limited to those that are necessary to carry out the purposes of this chapter and to mitigate specific and foreseeable adverse impacts on properties in the vicinity.

D. At the conclusion of the final selection process outlined above, the director shall give notice to the cultivation permit applicant of the operating conditions that would attach to the permit. Within ten days after notice, the applicant shall either:

1. Certify acceptance of the operating conditions and the standard conditions of the permit and pay all required fees, and the permit shall thereupon issue immediately.
2. If the applicant refuses or fails to certify agreement with any operating condition or to pay all required fees, the application shall be denied. The applicant may appeal any condition within ten days after notice of the

conditions. Upon either the failure to file a timely appeal or the rejection of the appeal, the application shall be deemed denied.

E. The operating conditions established by the director shall include the requirement for each selected applicant to obtain (1) any required state permits or licenses for the operation of a cultivation operation, and (2) all land use entitlements required to operate a cultivation operation. No cultivation permit shall be effective unless and until these conditions of approval are satisfied.

F. In the event that an additional permit becomes available subsequent to the scoring and ranking of applications pursuant to subsections (A) and (B) above, the director may issue a permit to the next highest ranked applicant by following the procedures in subsections (C) through (E), above.

#### **6.106.120 Appeal.**

- A. An applicant aggrieved by the decisions described in Section 6.106.060, 6.106.110 or 6.106.180 may appeal that decision to the board of supervisors within ten (10) days following the date of issuance of that decision by filing with the clerk of the board of supervisors or the director a notice of appeal specifying the grounds for such appeal. Filing such notice shall stay all proceedings in furtherance of the decision appealed from, including the proceedings related to the applications or permits of other applicants potentially affected by the board of supervisors' decision on the appeal. The director is designated as an agent of the clerk of the board for purposes of receiving a notice of appeal.
- B. The board of supervisors shall give written notice of the time and place for hearing any appeal filed pursuant this section. Such notice shall be given to the applicant and to the community development agency, and to any other person requesting such notice and depositing with the clerk of the board a self-addressed, stamped envelope to be used for that purpose.
- C. The board of supervisors may hear additional evidence and may sustain, modify, or overrule any order brought before it on appeal and may make such findings and decisions as are not inconsistent with state law and county ordinances. The board of supervisors may also remand the decision to the director for reconsideration of his or her decision in light of new information not previously presented to the director. If no motion relative to the order appealed attains a majority vote of the board of supervisors within thirty (30) days from the date of the hearing by said board thereon, said order of the director shall stand sustained and be final.
- D. For any appeals concerning a decision described in Section 6.106.110, the board of supervisors' review shall be limited to determining whether CDA materially erred in conducting the selection process with respect to following the RFP, County ordinances or state law. The board of supervisors shall not re-judge the proposals, alter the scoring or ranking of the proposals, or consider new evidence concerning the merits of the proposed cultivation operation.

- E. Any appeal that is not timely filed or otherwise fails to comply with Paragraph A of this section will be deemed ineffective by the director and the administrative determination that is being appealed will become final.

#### **6.106.130 Term of cannabis cultivation permits and renewals.**

- A. Each cannabis cultivation permit shall expire two years after the date of its issuance or upon the expiration date established by the director, whichever is earlier.
- B. Any permit may be renewed by the director for successive periods of up to two years each upon the submission of a renewal application by the permittee. At the time of consideration of a renewal application, the county shall consider compliance with conditions in the prior term and whether the permittee has made substantial progress toward implementing the permit.
- C. Any application for renewal shall be filed at least forty-five (45) days before expiration of the permit.
- D. Any application for renewal may be rejected if:
  - 1. The application is filed less than forty-five (45) days before its expiration.
  - 2. The permit is suspended or revoked at the time of the application; provided, however, that an application for renewal may be filed within ten days after the granting of a permittee's appeal of the suspension or revocation of a permit.
  - 3. The cultivation operation authorized by the permit has not been in regular operation in the four months prior to the renewal application.
  - 4. The cultivation operation fails to conform to the criteria set forth in Section 6.106.100(A).

#### **6.106.140 Fees.**

Each applicant shall reimburse the county for all staff costs, any consultant costs and any direct costs attributable to reviewing the application, conducting any required studies, acting upon the application, and verifying and enforcing compliance. The board of supervisors may establish a schedule of fees, which may include nonrefundable fees, in order to reimburse the county for such costs.

#### **6.106.150 Transfer of the permit.**

- A. No permittee may transfer a permit to another cannabis operator or premises without authorization by the county, granted in accordance with this section.
- B. A permittee shall apply for transfer of a permit by submitting, jointly with the proposed transferee, an application that complies with Section 6.106.080. The director shall verify information in the application and shall approve the transfer unless it fails to comply with the requirements of this chapter, the standards set forth in Section 6.106.100 or such other minimum score or standards as may be established by the director pursuant to Section 6.106.110(B).
- C. Before a transfer of a permit may become effective, the transferee shall certify acceptance of the operating conditions and the standard conditions of the permit and pay all fees required by Section 6.106.140.

#### **6.106.160 Prohibited operations.**

A permittee shall not conduct any manufacturing of cannabis on the premises. A permittee shall not sell, dispense or deliver cannabis to retail customers from the premises unless separately permitted by a cannabis retail operator or delivery permit pursuant to Chapter 6.108 of this code.

#### **6.106.170 Violations, criminal and civil liability and remedies.**

Any person violating any of the provisions of this chapter or of a permit issued pursuant to this chapter, is guilty of a misdemeanor. Each person is guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter or the permit is committed, continued or allowed in conjunction with the operation of a cannabis cultivation site and is punishable accordingly. For purposes of this section, each and every day of violation includes each day on which a failure to comply with this chapter or any conditions of a permit issued pursuant to this chapter continues. No proof of knowledge, intent, or other mental state is required to establish a violation of the chapter or permit.

In addition to the penalties provided above, any condition caused or allowed to exist in violation of any of the provisions of this chapter or of a permit issued pursuant to this chapter, shall be deemed a public nuisance and shall create a cause of action for injunctive relief and penalties pursuant to Chapter 17.59 of this Code. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

#### **6.106.180 Suspension and revocation.**

- A. The director may revoke or suspend a permit when it shall appear that the permittee has committed any of the following actions:
  - 1. Violates the operating or standard conditions of the permit or the requirements of state or local laws.
  - 2. Fails to take reasonable measures to control disturbances, loitering or such other problems on the premises.
- B. The director shall provide the permittee with written notice of the suspension or revocation that shall describe the grounds for revoking or suspending the permit.
- C. The permittee subject to the revocation or suspension may appeal the determination of the director to the board of supervisors within ten days after the date of the notice of the decision of the director. The board of supervisors shall act upon the appeal in accordance with Section 6.108.120.

#### **6.106.190 Limitations.**

Nothing in this Ordinance shall be construed to: (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) exempt cannabis cultivation operations from compliance with zoning and land use regulations, or, (3) allow any



activity relating to the manufacturing, distribution, or consumption of cannabis that is illegal under state or federal law.

**6.106.200 Severability.**

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

**6.106.210 Judicial review.**

Judicial review of a final decision made under this chapter may be had by filing a petition for a writ of mandate with the Superior Court in accordance with the provisions of Section 1094.5 of the California Code of Civil Procedure. Any such petition or any other action seeking judicial review shall be filed within ninety (90) days after the day the decision becomes final.

**SECTION 3**

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following called vote:

AYES:

NOES:

EXCUSED:

\_\_\_\_\_  
WILMA CHAN  
President of the Board of Supervisors

ATTEST:  
Clerk of the Board of Supervisors,

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM:  
DONNA R. ZIEGLER, COUNTY COUNSEL

By: \_\_\_\_\_  
Heather Littlejohn  
Deputy County Counsel